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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

MELKAM TADESSE,

Plaintiff and Appellant,

v.

BOARD OF TRUSTEES LOS ANGELES
COMMUNITY COLLEGE DISTRICT,

Defendant and Respondent.

B212837

(Los Angeles County
Super. Ct. No. BC380053)

APPEAL from a judgment of the Superior Court of Los Angeles County.

Elizabeth A. White, Judge. Affirmed.

Law Offices of Mark R. McKinniss and Mark R. McKinniss for Plaintiff and
Appellant.

Carlson & Messer, Jeffery J. Carlson, Jeanne L. Zimmer and Stephen A. Watkins,
for Defendant and Respondent.

Plaintiff and appellant Melkam Tadesse appeals from the judgment entered by the trial court in her personal injury action against the Board of Trustees for the Los Angeles Community College District. She asserts that the trial court erred in refusing to allow her to present new evidence on the day of the summary judgment hearing. The trial court ruled properly, as Tadesse's request was untimely and inconsistent with the rules governing summary judgment proceedings.

FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff's complaint alleges that, on March 21, 2007, while a student at Los Angeles Trade Technical Institute, Tadesse fell in class. The complaint was filed on October 31, 2007 and defendant Board of Trustees moved for summary judgment on July 23, 2008. Tadesse filed opposition to that motion on September 19, 2008, and Board of Trustees filed its reply on October 1, 2008. The court heard the motion on October 6, 2008.

At the time of the hearing, counsel for Tadesse brought the declarations of two witnesses, declarations that had never been shown to counsel for Board of Trustees, and as to which there was no declaration of the circumstances of their procurement. Counsel had made no motion for continuance of the hearing to seek and present such additional information.¹ The court declined to consider the declarations; it is based on this ruling and this ruling alone that Tadesse claims her appeal should be granted.

¹ In the opposition papers, Tadesse had requested a continuance to complete the deposition of another witness and to file supplemental opposition. Counsel did complete the deposition, but did not seek to file any supplemental pleadings, seeking instead to add extracts from the deposition at the time of the hearing. The witnesses whose testimony is at issue here were not mentioned in the request for continuance.

Tadesse concedes that her counsel failed to make a proper motion under Code of Civil Procedure section 437c(h)² and failed to establish the facts necessary to support such a motion; she contends the trial court abused its discretion in failing to allow her to present the new evidence nonetheless. The trial court did not abuse its discretion.

DISCUSSION

Section 437c(h) sets out specific ground rules to allow the responding party in a motion for summary judgment to obtain extra time to obtain additional information to support its opposition. “Section 437c is a complicated statute. There is little flexibility in the procedural imperatives of the section, and the issues raised by a motion for summary judgment (or summary adjudication) are pure questions of law. As a result, section 437c is unforgiving; a failure to comply with any one of its myriad requirements is likely to be fatal to the offending party. [¶] . . . Any arbitrary disregard of the statutory commands in order to bring about a particular outcome raises procedural due process concerns.” *Brantley v. Pisaro* (1996) 42 Cal.App.4th 1591, 1607.

Tadesse failed to comply with those ground rules: the only declaration she submitted in opposition to the motion pertained exclusively to another witness, and she made no motion to continue at any time. These provisions, which she concedes she failed to follow, reflect a balance of the rights of the parties. No party should be able to force its opponent to be confronted with evidence it has not had the right to review, consider, and respond to.

In *San Diego Watercrafts, Inc. v. Wells Fargo Bank* (2002) 102 Cal.App.4th 308, the court reversed the summary judgment because the trial court had considered evidence submitted for the first time with the reply brief. Relying on evidence that is not filed until after the opposing party had responded to the separate statement violates that party’s due

² All further statutory references, unless otherwise noted, are to the Code of Civil Procedure.

process rights; “due process requires a party be fully advised of the issues to be addressed and be given adequate notice of what facts it must rebut in order to prevail.” (*Id.* at p. 316.)

No different result is required here merely because the party attempting to submit late evidence is the respondent rather than the moving party. The moving party is entitled to the opportunity to have notice of facts it must respond to, and to prepare to respond. The procedural “safety valve” established by section 437c(h) preserves the right to obtain evidence to oppose the summary judgment, but those rules must be complied with.

Moreover, Tadesse failed to provide a showing of due diligence in obtaining this information, despite the court’s attempts to permit her to do so. Nor was there any reason for the court to find due diligence. Both of the new declarations were from fellow students who were working in the kitchen classroom with plaintiff the day of the accident; one was her lab partner. Plaintiff concedes counsel was not diligent in presenting the testimony; on the record before the trial court, we agree. The trial court did not err in excluding the late proffered evidence.

DISPOSITION

The judgment is affirmed. Respondent is to recover its costs on appeal.

ZELON, J.

We concur:

WOODS, Acting P. J.

JACKSON, J.